IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2851 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MULCHANDBHAI MOHANDAS PATEL

Versus

COMMISSIONER MID DAY MEAL & SCHOOLS

Appearance:

1. Special Civil Application No. 2851 of 2001
NANAVATY ADVOCATES for Petitioner
Mrs.B.R.Gajjar, AGP for State.

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 27/07/2001

C.A.V. JUDGEMENT

1. Rule. Rule is waived by Ms.B.R.Gajjar, learned AGP for the respondent-State.

2. Mulchandbhai Mohandas Patel, petitioner has filed this petition under Article 226/227 of the Constitution

of India praying a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction for directing the respondent to consider the tender of the petitioner submitted to the Commissioner, Mid Day Meal and Schools, Government of Gujarat, on 22nd January, 2001, pursuant to the Tender Inquiry No.MBU/AML/2/2000-2001, dated 31.12.2000.

3. The facts giving rise to this petition are as under:-

3.1 The petitioner is a proprietor firm engaged in supplying materials to the Government and are registered Government Contractors. The Commissioner, Mid-Day-Meal & Schools invited tenders for vessels needed for Mid-Day-Meal Scheme run and managed by the respondent at the Primary Schools in the State of Gujarat. The petitioner submitted his tender form alongwith the Earnest Money Deposit of Rs.7,00,000/- somewhere on 22.1.2001. The tender committee opened the technical bid and petitioner was passed in the technical bid on 22.1.2001.

3.2 On 26th March, 2001, petitioner wrote a letter to the respondent to open the tender for Commercial Bid at the earliest or to return the Earnest Money Deposit as the respondent is likely to take long time even to open the Commercial Bid.

3.3 The Commissioner thereafter addressed a letter on 12.4.2001 to the petitioner stating that the Commercial Bid is likely to be opened on 17th April, 2001, and he is also requested to remain present on that day. On 17th April, 2001, the Commercial Bid was opened, at that time the representative of the petitioner was not permitted to participate in view of the objection raised by one of the bidder that the petitioner had withdrawn the Earnest Money Deposit. The Commissioner has addressed another letter dated 17th April, 2001, to the petitioner and stated that as the tender committee is likely to take some time and as per his request Rs.7,00,000/- returned to him and also stated that as the petitioner has taken back the bank guarantee and therefore the condition of the Commercial Bid of the petitioner will automatically stand cancelled.

3.4 Being aggrieved and dissatisfied with the said action, the petitioner has filed this petition before this Court somewhere on 19th April, 2001.

4. When the matter was placed for hearing before

this Court, on 20th April, 2001, this Court (Coram: Kundan Singh, J.) passed the following order:

"Issue notice returnable on 2nd May, 2001. In case, the tenders have not been finalised and the contract agreement has not been executed in favour of any party till this date, the same will not be executed till the next date of listing. Direct service is permitted."

5. When the matter was placed for hearing, Shri R.R.Thakkar, Assistant Commissioner, Mid-Day-Meal and Schools has filed affidavit in this behalf. It has been stated that as the petitioner himself addressed a letter dated 26.3.2001 requesting the Commissioner to give him back his bank guarantee Rs.7,00,000/- given for EMD. In the affidavit it has been stated that as the petitioner vide letter dated 26.3.2001 requested to return his EMD and decision was taken to return his EMD on 31.3.2001 and Accounts Officer (Class-II Gazetted Officer) who is keeping EMD, has informed the petitioner on telephone on 4th April, 2001, to get his bank guarantee back by giving receipt of it in person and the petitioner also informed the Accounts Officer on phone that he is sending his person with receipt to collect the Bank Guarantee. It has been stated that, as per the letter dated 17.4.2001, the authority has already returned back the bank guarantee of Rs.7,00,000/- to the petitioner and, therefore, there is no question for to open his tender in this behalf.

5.1 As regards the letter dated 12.4.2001, it has been stated this letter was written to petitioner by the tender inquiry committee and tender inquiry committee was not aware that petitioner had addressed a letter dated 26.3.2001 for obtaining Rs.7,00,000/- bank guarantee and in fact the authority has already taken decision to return back the bank guarantee to the petitioner. It was further submitted that when the commercial bids were opened on 17.4.2001 at 4.00 o'clock the petitioner's representative who came to attend the opening of commercial bid was not authorised by the tenderer because he has not produced authority letter for the same.

5.2 It has also been stated that all other four tenderers remained present personally, one tenderer named Krishna Shaikshanik Sadhana Kendra, Nadiad, was not present personally but he was authorised in writing by the tenderer and authorised person produced the authority before opening of Commercial Bid started while the petitioner's representative has not produced any

authority though he was asked to produce. Moreover, the petitioner has not produced or submitted any letter cancelling his letter dated 26.3.2001 asking for return of EMD.

5.3 It has also been further stated that the other participating tenderers gave written objections and responded after weighing all facts presented before him. The very fact that the petitioner did not send his authorised person to take part in commercial bid as well as the fact that he did not bother to give in writing to cancel his earlier demand for claiming back his EMD even at that juncture, the Commissioner, Mid Day Meal & Schools, has taken bonafide decision not to open the Commercial Bid of the petitioner and he was requested to leave.

6. In view of the same, it was submitted that as the representation of the petitioner was not holding any authority to open the tender and he has not brought any letter cancelling his earlier letter dated 26.3.2001, the decision taken by the Commissioner not to open the petitioner tender was perfectly legal, correct and bonafide. It was further submitted that when the Commercial Bid of the petitioner was not open, it cannot be said that the petitioner's bid was lowest in this behalf. The respondent authority has also produced the extract of the file showing the steps taken by the authority pursuant to the letter addressed by petitioner on 26.3.2001 and, therefore, it was also stated that the decision taken by the Committee was bonafide in this behalf.

7. In view of the aforesaid submissions, when the tender of the petitioner was not duly filled in and before the Commercial Bid was opened, when he himself has withdrawn the bank guarantee and the authority has already taken decision to return back his bank guarantee, the action of the respondent authority not to open the Commercial Bid of the petitioner was perfectly legal and valid.

7.1 Learned advocate for the respondent has submitted that in this case petitioner has indicated is offer or proposal to the Government, however, before this proposals are accepted by the Government, he has revoked the same. She, therefore, submitted that in the words of Lord Lindley where he stated " A state of mind not communicated cannot be regarded in dealings between man and man". She, therefore, submitted that in this case it is no doubt true that petitioner offered for tender but before that condition of tender is accepted, he himself

has indicated and revoked the offer and, therefore, there was no question of accepting the proposal of the petitioner in this behalf so as to turn into a perfect contract.

8. In view of this, the present petition filed by the petitioner is required to be dismissed and the same is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated.

(K.M. Mehta, J.)

After pronouncement of the judgment, Mr.Hriday Buch, learned advocate for the petitioner prays for interim relief to continue further one week. In view of the same, interim relief granted earlier to continue till 3rd August, 2001.

(K.M. Mehta, J.)

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